
ONG & CO. PTE. LTD.**v.****JAMES LEOW LIANG PING**

HIGH COURT MALAYA, KUALA LUMPUR

VC GEORGE J

[SUIT NO. C 653 OF 1984]

27 JUNE 1985

CIVIL PROCEDURE: *Summary judgment - Order 14 application - Breach of contract of appointment - Whether Moneylenders Ordinance any defence.*

The defendant was appointed a remisier of the plaintiffs, who were stock and share brokers, under a letter of appointment dated 7 July 1981. The terms of the appointment stipulated that the defendant was to be responsible for the accounts of his clients together with interest whether or not action successful or otherwise was taken against those clients.

The defence was that as remisier the defendant acted as an agent for disclosed principals and accordingly not responsible for their debts and in any event the right to charge interest contravened the Moneylenders Ordinance.

Held:

[1] In the face of the written terms of the appointment of the defendant as a remisier with the plaintiffs which was not denied, the defendant's contentions were held to be of no merit. The defence put to ran foul of the said Clause 3 and 9 and is a sham.

[2] The Moneylenders Ordinance provided no defence either, particularly as there was no question of the plaintiff having lent money.

[3] There is no *bona fide* and/or any triable issue disclosed in the statement of defence on the affidavit of the defendant.

[Appeal allowed.]

For the plaintiffs/appellants - Tan Jin Chor; M/s. Tan Jin Chor & Co.

For the defendant/respondent - absent; M/s. Lim Kean Siew & Co.

JUDGMENT**VC George J:**

The plaintiffs are stock and share brokers and the defendant was one of their remisiers the terms and conditions of his appointment as such having been set out in a letter dated 7 July 1981 written by the plaintiffs to the defendant who had acknowledged the acceptance of the said terms and conditions by signing a copy of the letter which letter showing the acknowledgment is exhibited as JL 1 to the affidavit of one Jeffrey Lau affirmed on 19 May 1984 and filed in support of the plaintiffs' O. 14 application. Clauses 3 and 9 of the said terms and conditions are as follows:

- a* 3) You will be fully responsible for all the accounts of your clients including bad debts and will pay to the Company on demand the amount owing or claimed by you to be owing on all overdue accounts of your clients together with interest as mentioned hereunder whether or not action is taken against such clients for recovery and where action has been taken whether or not such action is successful.
- b* 9) The Company reserves the right to charge interest on all your overdue accounts including those of your clients. The basis of charging interest on overdue accounts is as follows:
- a) Any Contra Account which is outstanding for longer than six (6) days from the date of the Contra Statement will be charged interest @ seventeen per cent (17%) per annum.
- b) All Scrips awaiting delivery if not taken up within six (6) days from the date of the Debit Note will be charged interest @ seventeen per cent (17%) per annum.
- c* In the event of the bank interest rates in Singapore increasing, the rate of interest chargeable on (a) and (b) aforesaid shall be increased by the Company at its discretion.

The plaintiffs' claim against the defendant was stated in the statement to be "contra losses and interest totalling RM335,121.12 (being the equivalent of Singapore S\$304,655.57)" interest and costs. To the said affidavit of Jeffrey Lau was exhibited a statement of account showing particulars of how the S\$304,655.57 was arrived at.

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- A statement of defence had been filed and the defence was that as a remisier the defendant acted as an agent for disclosed principals (as opposed to undisclosed principals) and accordingly was not responsible for their debts. In the affidavit in opposition to O. 14 application the defendant reiterated what had been contended in the statement of defence. He also pointed out that in respect of the transactions with the plaintiffs he was never a principal. He also stated that the accounts exhibited in support of the application lacked sufficient particulars. He also complained that in respect of an amount of RM56,010.78, as the plaintiffs had instituted proceedings against the defendant's principal concerned they were not entitled to sue him for that amount.

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- The defendant also challenged the right to charge interest as the plaintiffs have done and as a final measure invoked the Moneylenders Ordinance as a defence.
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- In the face of the written terms of the appointment of the defendant as a remisier with the plaintiffs which was not denied I found no merit in the defendant's contentions. The defence put to runs foul of the said Clause 3 and 9. It is a sham. The Moneylenders Ordinance provided no defence either, particularly as there was no question of the plaintiffs having lent money. I found no *bona fide* or for that matter any triable issue disclosed in the statement of defence or the affidavit of the defendant.
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As to the quantum of the claim, the stand taken by the defendant was the denial of liability based on the aforesaid defences which, having been found not to provide any triable issue, the appeal had to be and was allowed.

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Also found at [1985] 2 CLJ 254

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